NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

MAR 14 2006

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

READYLINK HEALTHCARE, a Nevada corporation; et al., Plaintiffs - Appellants, v. DAVID JUSTIN LYNCH, an individual; et al., Defendants - Appellees.	No. 04-55890 D.C. No. CV-04-01265-NM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Nora M. Manella, District Judge, Presiding

Argued and Submitted February 17, 2006
Pasadena, California

Before: B. FLETCHER, TASHIMA, and CALLAHAN, Circuit Judges.

Plaintiffs-Appellants Readylink Healthcare and Barry Treash appeal from the district court's grant of Defendants-Appellees David Lynch and Lynch & Associates' motion to dismiss pursuant to Federal Rule of Civil Procedure

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

12(b)(6). We review *de novo* the district court's grant of Appellees' motion to dismiss, *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1061 (9th Cir. 2004), and the district court's decision to dismiss without leave to amend for an abuse of discretion. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). We affirm the district court's dismissal as to all but one claim. We do not restate the facts here as they are known to the parties.

The district court dismissed Appellants' false advertising and unfair competition (both federal and state), false light, and trade libel claims, holding that Appellees' statements were not misleading as a matter of law. It also dismissed their invasion of privacy claim.[1] Appellants' federal and state false advertising and unfair competition claims[2] turn on whether a reasonable person would have been deceived or misled by the statements. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242 (9th Cir. 1990). This is a legal determination

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[1] We have certified Appellants' invasion of privacy claim to the California Supreme Court for guidance as to whether that court's decision in *Gates v. Discovery Communications, Inc.*, 101 P.3d 552 (Cal. 2004), bars invasion of privacy claims for the publication of accurate facts drawn from the public record where the publisher is not a media organization or a member of the press.

[2] The federal claims were brought pursuant to the Lanham Act, 15 U.S.C. § 1125(a) (2006). The state unfair competition and false advertising claims were brought under Cal. Bus. & Prof. Code § 17200 (West 2005) and Cal. Bus. & Prof. Code § 17500 (West 2005), respectively.

appropriately made by the district court. *Freeman v. The Time, Inc., Magazine Co.*, 68 F.3d 285, 288 (9th Cir. 1995). We agree with the district court that a reasonable person would not be misled by the statements published on Lynch's website. *Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1182 n.8 (9th Cir. 2003).

False light is essentially a libel claim under California law. *Aisenson v. Am. Broad. Co.*, 220 Cal. App. 3d 146, 161 (1990). The district court was correct to hold that the postings on Appellees' website were not false and did not create a false impression about Appellants. *Solano v. Playgirl, Inc.*, 292 F.3d 1978, 1082 (9th Cir. 2002). Appellants' trade libel claim requires a finding that Appellees' statements could reasonably be understood to be disparaging in that they were "untrue or misleading and [were] made to influence potential purchasers." *Atlantic Mut. Ins. Co. v. J. Lamb, Inc.*, 100 Cal. App. 4th 1017, 1035 (2002) (citation omitted). The district court was correct to find that Appellees' statements that others should read the public documents posted to the website cannot support this claim. We therefore affirm the district court's dismissal of Appellants' false advertising and unfair competition (federal and state), false light, and trade libel claims.

The district court dismissed Appellants' intentional infliction of emotional distress claim because the conduct alleged was not "outrageous." Conduct is

"outrageous" for the purposes of a claim for intentional infliction of emotional distress where it is "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *KOVR-TV, Inc. v. Superior Court*, 31 Cal. App. 4th 1023, 1028 (1995). We agree with the district court that the publication of true and public information is not outrageous conduct within the meaning of cases interpreting the tort of intentional infliction of emotional distress.

The district court also dismissed Appellants' claims for intentional and negligent interference with potential business advantage. Lynch does not owe Appellants a duty of care, barring their negligent interference claim. *Stolz v. Wong Comm'cn Ltd. P'ship*, 25 Cal. App. 4th 1811, 1825 (1994). In addition, Appellants did not plead that Appellees "engaged in conduct that was wrongful by some legal measure other than the fact of the interference itself." *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (1995). Thus, the claim for intentional interference was also correctly dismissed.

Finally, we affirm the district court's dismissal without leave to amend. It cannot be said that the district court abused its discretion as each of Appellants' many claims spells out the essential facts, none of which are in dispute. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

With the exception of the invasion of privacy claim, which we have certified to the California Supreme Court, we AFFIRM the district court's grant of Appellees' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

AFFIRMED as to all but one claim that has been certified to the California Supreme Court.[3]

[3] The mandate shall not issue in this case until after the court disposes of the issue certified to the California Supreme Court.